



ALASKA MINERS ASSOCIATION, INC.

3305 Arctic #202, Anchorage, Alaska 99503 • (907) 563-9229 • FAX: (907) 563-9225 • www.alaskaminers.org

CQ645

September 23, 2002

NEPA Task Force
P.O. Box 221150
Salt Lake City, UT 84122.

FAX (801) 517-1021

RE: National Environmental Policy Act Task Force - Request for Comments.

Dear Sirs,

The Alaska Miners Association is a non-profit membership organization with approximately 1000 members and represents all aspects of the mining industry in Alaska. Many of our members have had projects that have gone through the NEPA process both as Environmental Assessments (EA) and as Environmental Impact Statements (EIS). Indeed, it is hard to imagine any mining project that will not require an EA or an EIS.

Thank you for performing this review of NEPA. We believe that such a review is long over due. We encourage that the entire NEPA history, process and details be reviewed and that major changes be made to correct the many problems now apparent in this process.

Major Overriding Problems

There are several overriding issues/problems/challenges that need to be addressed. Given the format of the Request for Comments our comments would fall into section, F. Additional Areas For Consideration, so we begin our comments with these items.

F. Additional Areas For Consideration:

1. NEPA intent versus current situation - Since initial passage of NEPA, the process has mushroomed into a program that goes far beyond the original legislative intent. This expansion has been due in large part to the normal propensity for agencies to reach for more and more power. The expansion is also due to the fact that individual agency officials, when faced with the need to make decisions, often find it easier to ask the applicant for more and more information, analysis and study. This compounds over time and whatever is required in one NEPA review becomes the lower threshold for future reviews. A third cause of expansion has been court decisions that require certain steps or additional data and review.

Recommendations: The Legislative History of NEPA needs to be reviewed and compared with current requirements and practice and regulations then changed to clarify and specify the legislative intent.

2. Lack of Consistency - We have found that there is not consistency in at least five areas: 1) between agencies; 2) between different areas of the country when the same federal agency is the lead agency; 3) within the same agency; 4) between projects in the same area of the country; 5) between EISs from the same office.

3. Definitions to determine threshold significance not clear - The terms "major federal actions", "significant affects" and "significant" need to be clearly defined in regulation. The application of "major federal actions" and "significant affects" on the environment have been taken to absurd extremes. A simple review of the issue shows that very minor actions with no real effects are swept up into major EA or EIS procedures. There is no way Congress intended for replacement of an existing bridge or renewal of a license for a dam or pipeline be forced to go through this program.

Recommendations: 1) The Legislative History of NEPA needs to be reviewed and the definitions in regulation changed to comport with that original intent. 2) Several basic "thresholds" need to be defined in regulation that determine the level of NEPA review for a project. 3) If the level of review for a specific project is not obvious, the burden must be placed on the agency to justify why a project must be elevated to a higher level of review. 4) Positive social impacts such as creation of jobs must not be a basis for requiring an EIS rather than an EA. 5) Follow-on affects such as jobs in other areas must not be a basis for requiring an EIS rather than an EA. 6) Off-site affects such as government jobs or facilities must not be a basis for requiring an EIS rather than an EA. 7) Categorical exclusions to NEPA should be developed.

4. Lack of Logic - The "thresholds" need to consider the area of the country and local situation. For example, Alaska has more than 100,000,000 acres of wetlands and yet Alaska projects are held to the same requirements of review as locations in the other states where wetlands are truly scarce. In Alaska, fish and wildlife populations and water recharge are not restricted by wetlands availability. Yet projects incur major costs dealing with wetlands as if were a major problem.

5. Personal Agendas - We have found that the personal agendas of agency staff often change a simple EA or EIS process into an huge, painful, time-consuming, and very costly event.

6. Command and Control versus Results Based - Various agencies, and especially EPA, tend to use a command and control approach to their NEPA analysis. If something is not done their way they are not satisfied, irrespective of whether there is any added benefit to the environment.

Recommendations: 1) Actions must focus on the result, not the technology to get there. The regulation should be changed to make this point. 2) The phrase "best available technology" should be removed totally. Throughout the NEPA review process, all requirements should focus on the result expected not on the technology to get there. The question of which technology will be used should be left to the applicant. Specifying technology will restrict and stymie the development of new approaches and new technology. In Alaska we have recently seen the folly of requiring use of BAT where EPA forced a mine to use new un-proven technology that was significantly more costly (both capital and operating) and resulted in a lower net reduction in discharges...all in the name of best available technology.

7. Time constraints - There is now no requirement that a NEPA review be completed in a set, or even mutually agreeable length of time.

Recommendations: 1) Establish specific time limits for aspects of the NEPA process. Consider inclusion of penalties for agencies that do not complete an EA or EIS within certain time limits. 2) Require that a clear time schedule be developed jointly between the agency and the applicant.

8. Appeals and Suits - Currently any individual or group can appeal and sue at various times during the process. These appeals are often not for the purpose of improving the project but to stop the project altogether or to string it along to the point where the applicant gives up and goes away.

Recommendation: 1) Require that for any individual or non governmental organization (NGO) to appeal or to file suit, they must have had meaningful participation during the public process. 2) Require that the losing party pay the legal costs of the applicant. 3) Require that the losing party pay the costs of delay to the applicant.

9. Homeless stipulations - Agencies often require stipulations in an EA or EIS that are not required in either statute or regulation of the agency. These so-called "homeless stipulations" are used to blackmail the applicant to do certain things not required by law.

Recommendations: NEPA regulations should be changed to specifically disallow requiring anything that is not required in statute or regulation.

10. Cost and impacts on agencies - The time commitment of staff and the cost to do an EIS, and even some EAs, is so great that agencies are being drained of their resources and are unable to accomplish their basic jobs. Similarly, the lack of staff and funding due to NEPA work is often so great that other projects are not allowed to go through the NEPA process.

Recommendations: Use of qualified and knowledgeable third party contractors should become a standard practice for agencies.

11. Impact on industry - The immediate and obvious negative impacts are the costs and delays that occur when a project goes through a NEPA process. However, another major negative impact for minerals companies is that the NEPA process becomes a disincentive to invest in the U.S. The issue is not the environmental regulations. The issue is the uncertainty of the process and the project delays that occur in the U.S. due to the NEPA process as compared to building a similar project in a foreign country with equal environmental protection requirements.

12. Government to government - There is a growing problem involving unspecified and undefined "government to government" consultation requirements that are being orchestrated by EPA. This has created confusion for applicants and other agencies and false expectations for Alaska's Native villages. Much of the problem lies in the title of the program, i.e., "government to government", and the false illusion that such a title creates in the minds of the ill-informed. Some of the villages believe that they have veto authority. An equally large problem is the fact that one cannot get a consistent answer from any EPA representative as to how the program is suppose to work, i.e, they

don't know themselves.

13. Cumulative impacts - The argument that all cumulative impacts have not been considered has been taken to ridiculous extremes. No matter how detailed an NEPA review, someone can always make an obscure argument that some cumulative or far-afield impact has not been evaluated. Cumulative impact considerations must be limited to the immediate area of the project. Any project must not be held hostage to the possibility of other projects that may or may not occur at some time in the future.

Recommendations: 1) Consideration should be given to removal of any requirement for cumulative impacts. 2) If this is not possible, the limitations must be clearly defined to limit the current expansiveness of this issue. 3) Specific lists of example impacts that will not require consideration should be defined in regulation. 4) Specify measurable, objective measures in regulation that will place limits on the expansiveness of review and on cumulative impacts review.

14. Continued NEPA Review - This review now being done should become an ongoing process. This specific review will correct some of the problems but we believe that more will surface over time.

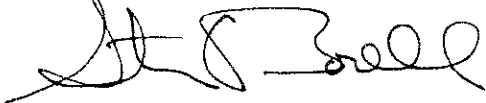
15. Burden on small business - NEPA creates a much greater burden on small business. Ways to relieve this burden must be found and implemented.

16. Double or multiple jeopardy - Projects should not be subject to multiple NEPA reviews as when a programmatic review is required for a land management plan and then an individual EA or EIS is required for specific projects within the land management plan area. If a site specific EA or EIS will be required, the programmatic should be eliminated, and vice versa.

We commend you for initiating this review and encourage that it be completed in the most expeditious manner possible.

Thank your for the opportunity to comment.

Sincerely,



Steven C. Borell, P.E.
Executive Director

cc: Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young

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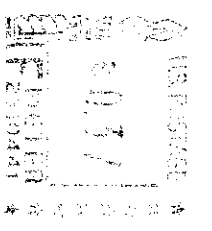
ALASKA MINERS ASSOCIATION, INC.

3305 Arctic Blvd. #202
Anchorage, Alaska 99503

RETURN SERVICE REQUESTED



Alaska's Future
Mining



NEPA Task Force
PO Box 221150
Salt Lake City, UT 84122

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